IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No. 681 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

SHANTILAL HIRALAL VAGHELA - Applicant(s)
Versus
TRIBHOVANBHAI AJITBHAI PARMAR & 7 - Respondent(s)

==========

Appearance :
MR NS SHETH for Applicant(s) : 1,
MS ROOPAL R PATEL for Respondent(s) : 1 - 7.
MR.H.L. JANI, ADDL PUBLIC PROSECUTOR for Respondent NO. 8,

==========

CORAM : HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

Date : 19/02/2007

ORAL JUDGMENT

Rule. Service of rule is waived by Ms.Roopal R. Patel, learned advocate for respondents no.1 and 3

to 7; and Mr.H.L. Jani, learned APP for respondent no.8. The present Revision Application is filed by the petitioner-original complainant being aggrieved by judgement and order dated 13.09.2006 passed in Criminal Revision Application No.66 of 2004 by the learned Additional Sessions Judge, Court No.11, Ahmedabad.

The Revision Application was filed by the original applicant-original accused against the order of the learned Metropolitan Magistrate, Court No.2, Ahmedabad passed in Criminal Case No.3090 of 1994 dated 5th February 2004, whereby the learned Metropolitan Magistrate was pleased to reject the application, exh.77, filed by the original accused seeking discharge.

The learned Metropolitan Magistrate was pleased to order that the charge be framed under sections 406, 420, 421 and 114 of the Indian Penal Code against the accused. The learned Metropolitan Magistrate was pleased to order that the order passed below application dated 24th March 1995 granting exemption is cancelled and all the accused were asked to remain present in the Court as the case was fixed at the

stage of 'framing of charge”.

2. The learned Additional Sessions Judge in his impugned order has stated in para 4 as under:

> “Heard the L.A. for the applicants/ accused and learned Addl. P.O. for the opponents.”

Mr.Sheth, learned advocate appearing for the petitioner herein-original complainant invited attention of the Court to the cause title of the judgement and order in Criminal Revision Application No.66 of 2004. There, opponents are two in number; opponent no.1 is Shantilal Hiralal Vaghela, petitioner herein, whereas opponent no.2 is the State of Gujarat. The learned advocate submitted that there is an apparent error committed by the learned Additional Sessions Judge when he has recorded that, 'heard the learned Additional Public Prosecutor for opponents'. There was no question of learned Additional Public Prosecutor appearing for opponent no.1. Not only that the learned advocate Mr.Sheth invited attention of the Court to the contents of para 10 of the judgement and order which read as under:

> “Learned A.P.P. for the State has resisted the application of the applicants/ accused

> and has submitted that prima facie, the applicants/ accused are involved in the offence of cheating and complainant has given oral evidence on oath vide exh.2 which shows that the applicants/ accused have committed offence of cheating and fraud. .. ..”

From the aforesaid it is clear that the submissions were made by the learned APP only on behalf of the State and not on behalf of the original complainant.

In view of the aforesaid facts it is clear that the learned Additional Sessions Judge did not hear the learned advocate for opponent no.1-original complainant.

3. Ms.Roopal R. Patel, learned advocate for opponents herein submitted that the petitioner herein-original opponent no.1 was represented by the advocate before the learned Additional Sessions Judge. She further submitted that the learned advocate had filed application/s seeking adjournment from time to time, that the advocate for opponent no.1-petitioner herein had filed application for placing certain documents on record.

Be that as it may, this does not go to show that the learned advocate for opponent no.1 was heard by the learned Additional Sessions Judge when he allowed the Revision Application and quashed the order passed by the learned Metropolitan Magistrate.

4. Only on this short ground in view of the violation of principles of natural justice, which is clear from the record of the court, which is verified from the Record & Proceedings, which is before this Court as it is called for, this application is allowed. The learned advocate for the petitioner was not heard by the learned Additional Sessions Judge, therefore, order impugned is vitiated.

5. The judgement and order allowing Criminal Revision Application No.66 of 2004 dated 13th September 2006 is hereby quashed and set aside and the matter is remanded to the Court of Sessions for hearing afresh in accordance with law. Rule is made absolute.

6. At this stage, Ms.Roopal R. Patel, learned advocate requests that as the matter is old, the Court of Sessions be directed to hear the matter as

expeditiously as possible.

The request is reasonable. The same is granted. It is directed that the Court of Sessions shall hear the matter as expeditiously as possible.

Office is directed to return the Record & Proceedings forthwith to see that the matter is not delayed on that count.

(RAVI R. TRIPATHI, J.)

karim